

ENTERED

March 31, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RONALD MCGAUGHEY,

Plaintiff,

VS.

THE STATE OF TEXAS, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-00255

**ORDER ADOPTING MEMORANDUM
AND RECOMMENDATION TO DISMISS CASE**

On February 25, 2022, United States Magistrate Judge Mitchel Neurock issued a “Memorandum and Recommendation to Dismiss Case” (M&R, D.E. 21). Plaintiff was provided proper notice of, and opportunity to object to, the Magistrate Judge’s M&R. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); General Order No. 2002-13. No objections have been timely filed.

When no timely objection to a magistrate judge’s M&R is filed, the district court need only satisfy itself that there is no clear error on the face of the record and accept the magistrate judge’s M&R. *Guillory v. PPG Industries, Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Services Auto Ass’n*, 79 F.3d 1415, 1420 (5th Cir. 1996)).

Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge’s M&R (D.E. 21), and all other relevant documents in the record, and

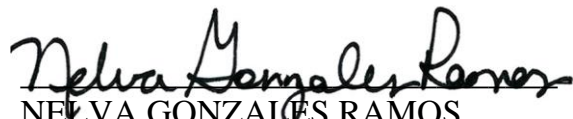
finding no clear error, the Court **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, pursuant to 28 U.S.C. §§ 1915A and 1915(e)(2):

- (1) Dr. Philemon Chang is **DISMISSED** from this action;
- (2) Plaintiff's claim for money damages against Officer Benavides in his official capacity is **DISMISSED** as barred by the Eleventh Amendment;
- (3) Plaintiff's claim against the State of Texas is **DISMISSED** as barred by the Eleventh Amendment;
- (4) Plaintiff's claims seeking injunctive relief are **DISMISSED** with prejudice as moot; and
- (5) Plaintiff's claims of excessive force and deliberate indifference are **DISMISSED** with prejudice for failure to state a claim and/or as frivolous pursuant to § 1915A(b)(1) because they are barred by limitations.

This dismissal counts as a "strike" for purposes of 28 U.S.C. § 1915(g), and the Clerk of Court is **INSTRUCTED** to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

This action is **DISMISSED WITH PREJUDICE** in its entirety.

ORDERED on March 31, 2022.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE